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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,530	02/13/2002	Michele M. Helwig	040230-000100US	8977

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EXAMINER

SWIATEK, ROBERT P

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,530

Applicant(s)

HELWIG, MICHELE M.

Examiner

Robert P. Swiatek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004 and 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13 and 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-11, 14, 15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Schlitz (US 4,742,799). The Schlitz animal training device includes outer fabric panels 10, 15 secured together by stitching 17 to form an enclosure, padding material 12, 16 disposed inside the enclosure, a slot 18 in upper panel 10 enabling access to the interior of the enclosure, and a “comforting article” contained within a pocket 19 formed within the padding material 12, 16. The comforting article can be, *inter alia*, a device to simulate a heartbeat of a mother animal (see column 1, lines 38-40, of Schlitz) and, in this case, the (presumably) ticking switch or clock used to create the heartbeat is considered to emit both sound waves and perceptible vibrations. As to claims 8, 9, Figure 2 of Schlitz shows the training device oriented such that the comforting article is adjacent an upper face of the device; however, simply inverting it would place the comforting article adjacent a lower face of the device. With regard to claims 1, 10, 11, it is noted that an animal could lie upon the Schlitz device, thus permitting it to be considered a bedding device such as a mattress or pillow.

Claims 1-5, 8-11, 14, 15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US 4,718,876). The patent to Lee discloses a toy in the form of a stuffed bear 10 with a

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battery-powered heartbeat simulator 12, which is considered to emit both tactilely perceptible vibrations and sound waves. The heartbeat simulator 12 is located in a pocket 88 sewn into at least a portion of an outer cover of the toy (see elements 90, 92, 94 of Lee). Pushing an actuator 22 on the simulator turns it on, while releasing the actuator allows it to return to its initial position, deactivating simulator operation. A child—considered to be a human animal—playing with the toy could activate the heartbeat simulator by lying upon the toy; as to claim 9, placing the toy bear on its stomach would situate the heartbeat simulator adjacent a lower face of the toy. With respect to claims 10, 11, a child or other animal could rest at least a portion of its body upon the Lee toy, thereby permitting it to function as a mattress or pillow.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlitz. Although a “purr” simulator is not disclosed in the Schlitz patent, its use would have been obvious to one skilled in the art wishing to permit the device to be used for pacifying kittens.

Claims 8, 9 are objected to because of the following informalities: In line 4 of each claim, “is” should be changed to –are–. Appropriate correction is required.

The abstract of the disclosure is objected to because in line 4, “is provided by the present invention” should be deleted. Correction is required. See MPEP § 608.01(b).

Applicant's arguments filed 14 June 2004 have been fully considered but they are not persuasive. The claims are not believed allowable for the reasons set forth above.

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Summary: Claims 1-11, 14-17 have been rejected; claims 12, 13, 18-29 have been withdrawn from consideration.

RPS: ©703/308-2700
10 January 2005

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
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